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Incorporation, Annexation, and Detachment of Ohio Municipalities

Harold T. Towe

MUCH STUDY and discussion have been devoted, in recent years, to the subjects of incorporation and annexation of municipal corporations. As citizens of an unincorporated area become dissatisfied with their existing form of township government, because of its inability to provide improved or additional services, they begin to think of changing their governmental status. Furthermore, as they reflect on their problems, these citizens realize that the inhabitants of an unincorporated area actually have very little voice in their local affairs. The public mind turns to incorporation and annexation as possible solutions to this situation.

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tion as possible solutions to this situation.

This demand for improvement in governmental services and a more equitable distribution of tax revenue points up the fact that county and township governments have

failed in their mission of serving their citizens. Unincorporated areas are directly under the jurisdiction of the township and indirectly under that of the county, neither of which have the authority to perform many of the services a growing community requires. The county and the township governments were designed for thinly populated areas and have not proved adaptable to the needs of concentrated areas.

I. INCORPORATION

The American municipality is historically and traditionally a creature of the state legislature, which may establish or abolish it, expand or reduce its geographical limits, and add to or take away its powers at will. The Ohio state constitution provides the only general limitation on the legislature's powers in this respect.¹

In a strict sense of the word the early city charters were not true charters of incorporation for they were mere grants of privileges to certain communities in consideration of the payment of a tribute to the government. The legal idea of incorporation, on the other hand, is an act by which a

¹ OHIO CONST. Art. XVIII § 2.

number of natural persons are made into one legal "person" which is so distinct from its members that it may be sued by them; the community becomes a legal entity capable of self-government.

As a municipal corporation the entity serves in a dual capacity. Its primary purpose is to supply local needs and fulfill the wishes of its inhabitants. A secondary role is to act as an agent of the state in performing duties which may not be strictly local in character.²

Much agitation has been aroused against the further increase of political units. Had as much energy been expended to determine why the "chronic disease of municipal divorce" was spreading, the agitation would have been terminated as abruptly as it had begun. In checking the reasons for incorporation among approximately fifty Ohio villages which have undertaken an "entity" capacity since 1930, the following results were obtained.

TABLE I

REASONS GIVEN FOR THE INCORPORATION OF 47 OHIO VILLAGES

To receive more and better services	14
To get water and sewer systems	12
To get better and cleaner streets	12
To obtain a greater return from their tax money	11
To get better fire and police protection	11
To get better street lights	10
To get zoning or building restrictions	8
To prevent annexation	4
To have garbage collection	3
To participate in WPA funds	2
To have Sunday dancing	2
To get lower taxes	2
To get traffic control	2
To obtain year around service	2
To permit gambling	1
To get more and better recreation	1
To receive railroad and public utility taxes	1
To preserve a park	1

A. Advantages of Incorporation

The main benefit which comes from incorporation arises out of the legislative powers given the village council by the constitutional home-rule provision that states:

²Hamilton County v. Mighels, 7 Ohio St. 109 (1857).

³OHIO CONST. Art. XVIII § 3.

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local, police, sanitary and other similar regulations, as are not in conflict with general laws.³

The significance of this provision is increased by the principle of American democracy that governments at the various levels shall be determined by the people. Under township government most of the decisions are not made by the people but by the county commissioners or the state legislature; there is little ordinance-making power and no home-rule privileges. After incorporation, however, if the citizens are not satisfied with the form of government under the general law, they may proceed to draft a home-rule charter under the constitution or adopt one of the forms of government available under the optional plans of government set forth in the statutes.

The installation and maintenance of traffic lights and signals, which in the townships are regulated and controlled by the state highway department or by the county, depending upon whether they are located on a state highway or county highway, would also fall under the jurisdiction of the village.⁴

As a township, a community is governed by the county building code and is also subject to certain provisions of the state building code, particularly as to theaters, assembly halls and school buildings.⁵ As an incorporated village it could adopt its own building code much to its advantage since experience reveals that, generally, county building codes are inadequate for village or city application.

Village government may take over the control of matters relating to the rates and services of the various public utilities such as electricity, gas, transportation and telephone which under the township set-up is entirely under the control of the state public utilities commission. The provision of the Ohio constitution which is the basis for some of the above authority states:

Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. . . .⁶

Not only does the village council have control over rates and services; it may also require a public utility to make extensions if deemed conducive to public interest.⁷

A broad power which comes with incorporation is that of planning and

³ 53 OPS. ATT'Y GEN. [Ohio] No. 3089.

⁴ OHIO REV. CODE §§ 3781.01 *et seq.*

⁵ OHIO CONST. Art. XVIII § 4.

⁷ OHIO REV. CODE § 4905.39.

zoning. In recent years, this function has grown with tremendous strides. It was in this area that municipal government had even a more outstanding advantage over township governments. However, in 1947, the Ohio legislature conferred this power with some modifications upon township authority also.⁸ The township zoning act is quite restricted by law, while the municipal zoning power is comprehensive. Experience to date indicates that this power has not been too effectively nor happily administered by most townships.

From the tax aspect, there are important advantages in favor of municipalities. The entire proceeds from the corporate tax levy go directly to the village government and are used within its confines. An incorporated unit receives three lucrative sources of revenue in which it did not participate as an unincorporated area: namely the intangible classified personal tax, the motor vehicle license tax and a 37½ per cent share of the gasoline tax (the township receives only a 17½ per cent share). From the motor vehicle license tax an incorporated area receives a 25 per cent share, while an unincorporated area receives none. Furthermore, incorporated areas receive a 75 per cent share of the cigarette tax while the unincorporated areas receive none. The municipalities may also retain the entire proceeds of an amusement tax, if they care to adopt one.

Generally, in Ohio, the villages remain part of the township out of which they were created, but there is little excuse for having both township and municipal governments exercising jurisdiction over such a restricted area. Because of this township authorities perform practically no functions within the incorporated limits of a township. To eliminate non-functioning township authorities a statutory provision enables a municipality to proceed through the county commissioners to separate from the township and set up a "phantom" township.⁹ Not only does this proceeding eliminate what little overlapping of authority there might be; it also eliminates the township tax within the incorporated area.

Other important benefits of incorporation are the ability to provide an adequate recreational program under trained personnel; the power to regulate businesses, which is of great consequence if the area is not exclusively residential; and the great experience of self government.

B. *Incorporation As a City*

Although the Ohio law does not detail the steps to be taken to incorporate a city (which a community in excess of 5,000 population is declared to be) Article XVIII, Section 2 of the Ohio Constitution states: "General laws shall be passed to provide for the incorporation and government of cities and villages. . . ." However, in spite of this constitutional power the Legis-

⁸ 122 Ohio Laws 597.

⁹ OHIO REV. CODE § 503.07.

lature has provided laws only for the incorporation of villages. Therefore, when an unincorporated area is planning to incorporate, it has no alternative but to incorporate under the statutory village form of government. After being so organized, it must continue as such until it adopts a home-rule charter as empowered by the Constitution, or adopts one of the so-called optional plans of government as provided under the statutes, or, finally, until the next federal census shows its population to be in excess of 5,000.

Note that in this last option it is a federal census that is required. Therefore, the census a municipal corporation is authorized "to take and authenticate"¹⁰ cannot be used to exercise the option, even though it shows the population of the municipality to be in excess of 5,000. The Ohio Supreme Court has quite clearly stated this rule.¹¹

Further emphasis was added to this statement when the Ohio attorney general ruled that a municipal corporation could not advance from the status of a village to that of a city on the basis of population increases disclosed by an interim census of that municipality conducted prior to the regular decennial census, notwithstanding that such interim census may have been conducted by or under the authority of the Federal Bureau of the Census, and at the expense and request of the municipality.¹² In another opinion, the attorney general held that an area upon incorporation may only acquire a status of a village, regardless of population, and may only advance to the status of a city by a proclamation of the Ohio secretary of state based upon a federal census conducted subsequent in point of time to its original incorporation.¹³

Under certain circumstances incorporation may be made without the necessary requisite population being shown. Further treatment of this procedure will be given.

C. *Incorporation As a Village*

1. By Commissioners

Under the present Ohio law, incorporation as a village can be commenced through the county commissioners or through the township trustees.

Incorporation procedure through the county commissioners is initiated

¹⁰ OHIO REV. CODE § 715.17.

¹¹ *Murray v. State*, 91 Ohio St. 220, 110 N.E. 471 (1915).

¹² '54 OPS. ATT'Y GEN. [Ohio] No. 3608. The attorney general in this opinion suggested that the Village of Kettering of 22,500 population could adopt a charter under the home-rule amendment or for administrative purposes adopt a charter under the optional charter plans of government in the statutes.

¹³ *Ibid*, No. 3606. It also stated that where two petitions for incorporation are filed with a board of township trustees under Ohio Revised Code Section 707.15, precedence must be given to that petition over which the board first acquired jurisdiction for purposes of consideration and action.

by a petition,¹⁴ signed by not less than thirty electors,¹⁵ and addressed to the board of county commissioners.¹⁶ A public hearing¹⁷ is held on the petition, and an order allowing incorporation is issued by the commissioners.¹⁸ A transcript of the order is filed with the county recorder¹⁹ who, unless enjoined,²⁰ forwards a transcript to the secretary of state.²¹ Lastly, an election of officers is held.²²

¹⁴ The petition shall contain (1) an accurate description of the territory embraced within the proposed municipal corporation, and it may include adjacent territory not laid off in lots; (2) the supposed number of inhabitants; (3) the name proposed; (4) the name or names of a person or persons to act as agent or agents for the petitioners. (OHIO REV. CODE § 707.04). The petition (1) shall then be presented to the board of county commissioners at a regular meeting, who then (2) file it with the county auditor where it is subject to the inspection of any person interested; (3) the commissioners then fix the time and place for hearing the petition, which shall not be less than sixty days after such filing; (4) the agent(s) then cause a notice of such hearing to be published in a newspaper of general circulation in the county for a period of six consecutive weeks. (OHIO REV. CODE § 707.05).

¹⁵ Proof of the qualifications of the signers need not be filed simultaneously with the petition but may be filed thereafter for consideration. *State v. Trustees*, 161 Ohio St. 38, 117 N.E. 433 (1954).

¹⁶ OHIO REV. CODE § 707.03.

¹⁷ (1) Any person interested may appear in person or by attorney; (2) affidavits may be used for and against the petition, (3) by permission of the Board; but, (4) if new territory is added then another time for hearing is fixed. (OHIO REV. CODE § 707.06).

¹⁸ After the hearing, the board of county commissioners must enter an order on its journal allowing the incorporation if it finds that (a) the petition contains all the matters required; (b) the statements in the petition are true; (c) the name proposed is appropriate; (d) the limits are accurately described and not unreasonably large or small; (e) the map or plat is accurate; (f) the persons whose names appear on the petition are electors residing in the territory; (g) notice has been given as required; (h) there is the requisite population for the proposed municipal corporation; and (i) it is right that the prayer of the petition be granted. (OHIO REV. CODE § 707.07).

¹⁹ A certified transcript, signed by a majority of the commissioners, must be delivered together with the petition, map and all other papers on file relating to the incorporation proceedings, to the county recorder; (OHIO REV. CODE § 707.08) and, after the expiration of sixty days, unless enjoined by virtue of Section 707-11, the county recorder shall make a record of the petition, transcript and map in the proper book of records, and shall preserve in his office the original papers delivered to him by the board of county commissioners certifying thereon that the petition, transcript and map are properly recorded. (OHIO REV. CODE § 707.09).

²⁰ (1) Within sixty days after the filing of the papers relating to the incorporation by the board of county commissioners with the county recorder, any person may apply for an injunction on any of the following grounds: errors in the procedure, inaccuracy of the boundaries, the unreasonably large or small limits of the proposed corporation, or that it is not right, just or equitable that incorporation be granted (OHIO REV. CODE § 707.11); however, (2) notice of the application for an injunction must be given to the county recorder and to the agent or agents of the petitioners (OHIO REV. CODE § 707.12); (3) hearing on said application coming not less than twenty days after its filing (OHIO REV. CODE § 707.13); (4) upon receipt of the notice of the application for an injunction, the county recorder must transmit

It is to be noted that the statutes fail to set any substantial or definite requirements to aid the county commissioners in passing upon the propriety of granting or refusing the petition. But the petition may be amended by leave of the county commissioners.²³

A distinction to be observed is that in case the county commissioners refuse to grant the request for incorporation, nothing can be done about it by the petitioners; but, on the other hand, if the application is approved, then "any person interested" may resort to the common pleas court for an injunction to restrain the county recorder from making the record and certifying it to the secretary of state. The following grounds may be used in the injunction proceeding: errors in procedure, inaccuracy of the boundaries, the unreasonably large or small limits of the proposed corporation, or that it is not right, just or equitable that the incorporation be granted.²⁴

Only one reference to population appears in the requisites for the petition. The county commissioners in passing upon the petition for incorporation must find that the proposed municipal corporation has the "requisite population."²⁵ Just as in the case of determining what is "unreasonably large or small," there is no guide-post for the county commissioners by which to determine the meaning of this requirement.

2. By Trustees

The second method of incorporation — through the township trustees — is initiated by a petition,²⁶ signed by not less than thirty electors, (a majority of whom are freeholders), and addressed to the trustees of the

to the clerk of the common pleas court all papers relating to the proposed incorporation (OHIO REV. CODE § 707.12); and, (5) if the court, upon the hearing, finds no errors in the proceedings before the board of county commissioners, nor inaccuracy in the boundaries, that the territory is neither unreasonably large nor small and that it is right, just and equitable that the application be granted, the injunction petition shall be dismissed (OHIO REV. CODE § 707.13). (6) The Clerk of courts shall return all papers to the county recorder. (7) If the court finds error in the proceedings, the court shall make an order enjoining the county recorder making the record, (8) such order not being a bar to a subsequent application for incorporation (OHIO REV. CODE § 707.14).

²¹ The county recorder, unless enjoined by an application for an injunction under Section 707.11, shall make and certify two transcripts of the record, one of which he shall forward to the secretary of state and, on demand, shall deliver the other one to the agent of the petitioners. (OHIO REV. CODE § 707.10).

²² OHIO REV. CODE § 707.10.

²³ OHIO REV. CODE § 707.06.

²⁴ OHIO REV. CODE § 707.11.

²⁵ OHIO REV. CODE § 707.07.

²⁶ The petition shall contain, in addition to the requisites set out in footnote 12, *supra*, (1) an accurate map of the territory; and, (2) a request that an election be held to obtain the sense of the electors upon such incorporation. (OHIO REV. CODE § 707.15).

township in which the territory is located. If the territory is located in more than one township the petition is addressed to the township in which the majority of the inhabitants reside.²⁷ An election is held and, if the majority of the inhabitants favor incorporation, the trustees must declare the territory to be an incorporated village. An election of officers completes the incorporation process.²⁸

In the proceedings before the county commissioners, the county commissioners become a tribunal or court to hear the petition and determine whether or not the request of the petition for incorporation should be granted; while in the proceedings before the township trustees, the trustees themselves do not make the decision, but hold an election and the electors within the prescribed territory determine whether or not there shall be an incorporation. There are definite advantages either way.

Since the law requires that such petition be signed by freeholders (in other words, property owners) it is good practice to meet this requirement by submitting a certificate from the board of elections as to the residence and voting qualifications of each petitioner and a certificate from the county auditor as to petitioner's ownership of property.

In the past it was often stated that an area laid off in lots could not be incorporated by way of the township trustees, but had to be accomplished through the county commissioners. In 1947, this point was presented to the Lucas County Court of Appeals in an incorporation matter involving Washington Township. This township had several compact districts laid off into what are paradoxically termed village or hamlet lots, as well as large areas of farm and unplatted territory. Basing its opinion mostly on the legislative history of incorporation procedure, the court held that procedure through the township trustees was proper.²⁹ Later, the Ohio Supreme Court reached a similar conclusion.³⁰

²⁷ The petition may be submitted at a regular or special meeting of the township trustees, after which, if the trustees are satisfied that the persons who signed are electors and live within the limits of the proposed incorporation, and that a majority of them are freeholders they shall order that such territory, with the assent of the qualified voters thereof, be an incorporated village by the name specified in the petition. The trustees then shall order that such election be held within fifteen days thereafter of which the board of elections shall give ten days notice by publication in a newspaper of general circulation in such territory; similar notices shall be posted in three or more places in the territory. (OHIO REV. CODE § 707.16).

²⁸ If a majority of the votes are against incorporation then there shall be no incorporation, but this shall be no bar to other proceedings for the same purpose (OHIO REV. CODE § 707.17); but if a majority vote in favor of incorporation, then the township trustees shall note on their journal the number of votes for and against incorporation and shall declare that such territory from that time is an incorporated village and shall make an order declaring that such village has been incorporated by the name adopted (OHIO REV. CODE § 707.18).

²⁹ *Youngs v. Bd. of Elections*, 81 Ohio App. 209, 78 N.E.2d 761 (1947).

³⁰ *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948).

As pointed out previously, the most distinguishing feature between the two methods of incorporation is that in the trustee method there is a provision for an election to obtain the feelings of the electorate on the issue of incorporation. Under the commissioner method only a hearing is necessary. This, however, is not the only difference.

TABLE II
DIFFERENCES BETWEEN THE TRUSTEE AND THE COMMISSIONER
METHOD OF INCORPORATION

COMMISSIONER METHOD	TRUSTEE METHOD
Only a hearing required	Election mandatory
Amendment permissible by leave of the commissioners	No amendment possible to the petition
"Requisite population" required	No "requisite population" required
60 days to file injunction against County Recorder	No injunction except within 10 days of the filing with the County Recorder by the trustees
Commissioners must determine whether or not the proposed area is unreasonably large or small	Trustees may not determine whether or not the area is unreasonably large or small

Under the trustee method of incorporation the question may arise whether all the trustees must be present to act on the incorporation petition. It was decided in the case of *Young v. Bd. of Elections*,³¹ that since there is no longer any statute dealing with this problem,³² the common law rule is in effect and therefore all three township trustees must have notice and a majority of them must be present in order to act.³³

D. *Incorporation of Territory Surrounding Summer Resort*

In addition to the two methods of incorporation of a village there is a special provision in the statutes for the incorporation of territory immediately surrounding a summer resort, park, lake or picnic ground kept regularly for such outing and pleasure, containing a population of not less than fifty persons, and requiring police protection.³⁴

It is provided that any such territory may incorporate by setting up notices of a proposed election in the three most public places in the territory desired to be incorporated and signed by five citizens and electors of the territory. These notices must be posted at least ten days before the election,

³¹ 81 Ohio App. 209, 78 N.E.2d 761 (1947).

³² The original statute provided for three trustees, and that a "majority shall be a quorum to do business at all meetings of the trustees." This statute has been repealed.

³³ The common law originally required the presence of all the trustees at all meetings, and that all be given notice of meetings.

³⁴ OHIO REV. CODE § 707.29.

stating the time and place of the election, and must include an accurate description of the territory involved. The election shall be conducted in the manner prescribed for the election of township officers.³⁵ If the majority of the ballots cast at such election are marked "For Incorporation," it shall be considered that the electors of such territory have assented to such incorporation. The territory then shall have all the rights and privileges of a village. It should be observed that the right to incorporate under this section is not based upon the number of citizens or electors residing in the territory, but merely upon the number of persons residing therein, regardless of whether or not they are electors.³⁶ The recital "any territory requiring police protection" is merely descriptive of the purpose of the incorporation which, it is provided, is a condition precedent to the right to incorporate.

Although not expressly provided in the statutes authorizing this special method of incorporation, it has been declared that after the election and after it has been determined that a majority of ballots favor incorporation, there should be filed with the county recorder, wherein such territory is located, proof in writing of the existence of all the facts authorizing the incorporation of such territory and empowering it to function as a municipality, which written proof should be recorded by the county recorder and proper certification made by him to the secretary of state.³⁷ There have been two incorporations of this type since 1927, according to the secretary of state.³⁸

E. *The Surrender of Corporate Powers*

Generally speaking, a municipal corporation may surrender its corporate powers either by judicial decree or by legislative act. In Ohio, it is accomplished by the latter method. The first recorded surrender of corporate powers appears in an act of the General Assembly on January 22, 1821, in which the letters of incorporation of the town of West Union in Adams County were expressly repealed. This act provided, as does the present Section 703.20 of the Ohio Revised Code, that all existing obligations must be paid before the surrender is complete.³⁹

³⁵ OHIO REV. CODE § 707.30.

³⁶ '30 OPS. ATT'Y GEN. [Ohio] 1119.

³⁷ '27 OPS. ATT'Y GEN. [Ohio] 2689.

³⁸ Gloria Glens Park and Yankee Lake, both incorporated in 1931.

³⁹ 19 Ohio Laws 50. The matter of existing obligations came before the attorney general in January, 1951, as a result of the vote of the people of the Village of Halls Corners, Ohio, on April 1, 1950, by which they surrendered their corporate powers. In an opinion rendered January 4, 1951, the attorney general ruled that if a village is in debt at the time of surrender, such debt should be extinguished by levying and collecting taxes for that purpose. It is the duty of the officers of the village in office at the time of surrender to levy and assess a tax rate sufficient to pay these

The Ohio Municipal Code of 1869 permitted cities and villages to give up their corporate powers.⁴⁰ Today there is no provision whereby an Ohio city may surrender its corporate power, and there is only one method by which an Ohio village may do so, namely, a dissolution by vote of the electorate. A village may surrender its corporate powers upon petition to the council signed by forty per cent of its electors and an affirmative vote of a majority of such electors at a special election.⁴¹

It is stated in the Code that the surrender of corporate powers shall not affect vested rights or accrued liabilities of such village. Claims may be settled, property disposed of, taxes levied and collected to pay existing obligations. No new liabilities may be incurred by the village after the petition to surrender its corporate powers has been filed unless the vote to surrender is defeated. All money or property remaining after surrender and after all obligations have been paid is given to the school district embracing such village.⁴²

Not directly connected with surrender of corporate powers is the difficult problem in which the people have gone through all the steps of incorporation and have voted to incorporate, but have failed to call for an election of officers. The question of whether it is too late to return to an unincorporated status after proceeding this far with incorporation was answered in the affirmative by the attorney general.⁴³ The basis for this holding was that there was no provision in the statutes which authorized a turning back at such point. In the principal case a *de facto* corporation existed; yet it could not perform any functions as such until proper steps

obligations; it was their duty to determine the validity of and remit to the creditors the payment of the outstanding obligations of the village; they still have that duty after the surrender of corporate powers. Such duty could not be avoided even by resignation. The basis for this ruling was by inference from an early case involving Massillon, Ohio: *Gorgas v. Blackburn*, 14 Ohio 252 (1846). '50 OPS. ATT'Y GEN. [Ohio] 846.

⁴⁰ 66 Ohio Laws 269.

⁴¹ OHIO REV. CODE § 703.20. The following villages have surrendered their corporate powers since 1930: Deavertown, Halls Corners, Highland Park, Lake Milton, Macedonia, Sagamore Hills, Santoy, Springfield, Western Star and Wright View.

The Village of Halls Corners, Trumbull County, presented an interesting case. In 1936, this 420-acre village, just north of Youngstown, Ohio, was part of Liberty Township which had voted itself dry under local option law. This area then incorporated as a village and voted wet. Its chief business was the "Jungle Inn," a night club and gambling place. There was no attempt at village government, not even a town hall. In August, 1949, the "Jungle Inn" was raided and padlocked by the state and closed by the state fire marshal as a fire hazard; the mayor was removed by the governor. On April 1, 1950, the residents of the Village of Halls Corners by a vote of 55 to 31 at a special election voted to surrender its corporate powers and return to unincorporated status in Liberty Township.

⁴² OHIO REV. CODE § 703.21.

⁴³ '25 OPS. ATT'Y GEN. [Ohio] 244.

had been taken to elect its officers, because a municipal corporation acts through its officers and is without power until it has them. It cannot carry out the functions for which it was organized; it is unable to adopt rules and regulations governing the conduct of its inhabitants, or require the levy of taxes. Therefore the duty of holding an election is mandatory. However, after the election of officers, the provisions of Ohio Revised Code Section 703.20 relative to the procedure for dissolution could be invoked.⁴⁴

F. *Effect of Incorporation on Other Governmental Units*

When an area divorces itself from the township government by way of incorporation, there will be certain effects upon other governmental subdivisions with which it has been associated. Perhaps the most direct consequences are financial ones.

The intangible property tax is completely lost to the county, since the statutory method of distribution provides that the amount of this tax originating outside of municipalities shall go to the county.⁴⁵ The county suffers only a partial loss in revenue from the motor vehicle license tax, however, since this tax is allocated on the basis of the number of motor vehicles registered in the village. The county road fund gains with each incorporation, though it is not of great importance, for as a community is incorporated, the county is thereby relieved of highway maintenance expense for the village streets, formerly county roads. No part of the county's gasoline tax revenue is lost.

Incorporation of a village will cause the township in which it is located to receive less revenue. There will be a reduction in the proceeds from its general taxes. The effect of this loss of taxes is that the township will be forced either to reduce expenditures or increase its property tax.

Then too, it is possible for the village to be freed of paying any township property tax. This is done by requesting the county commissioners to separate the village from the old township and to create a new township with boundary lines co-terminous with the village boundary lines.⁴⁶ In this way no township property tax could be levied in the village. A further advantage from this action would be the abolition of all township officers. Their duties would be assumed by the corresponding officers of the municipal corporation, except that justices of the peace and constables would continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation,

⁴⁴ *In re Village Incorporation*, 3 Ohio L. Abs. 465 (1925).

⁴⁵ OHIO REV. CODE § 5707.05.

⁴⁶ OHIO REV. CODE § 503.07.

clerks and other officers and employees. Such justices and constables would be elected at the regular municipal elections.⁴⁷

Any effect upon other municipalities in the county is usually unnoticeable. Upon sources of state revenue such as the property, inheritance, estate and intangible taxes, there is no effect. Regarding the sales tax, there is a slight difference in that all municipalities and counties of the state share in the local government fund and the incorporation of each new village means a reduction, slight to be true, for the others.

G. *When is Incorporation Completed?*

Resort to the statutes is necessary to answer this question which has been raised many times. Ohio Revised Code Section 707.10 states:

When a record is made as provided in section 707.09 . . . , the municipal corporation shall be the village of _____, to be organized and governed under Title VII of the Revised Code. Thereupon the county recorder shall make, and certify under his official seal, two transcripts of the record, one of which he shall forward to the secretary of state, and, on demand, deliver the other to the agent of the petitioners with a certificate thereon that the duplicate has been forwarded to the secretary of state.

When a municipal corporation is organized by the *election* of its officers, notice of its existence shall be taken in all judicial proceedings. (*Italics supplied*)

The record mentioned in the above section refers to the record of the incorporation proceedings. Attention is directed to the last paragraph of the above section. It seems very clear that the law does not consider a village organized until it has elected its officers. In other words, the incorporation of a municipality is not complete until an election of village officers has been held as provided in Ohio Revised Code Section 707.21.⁴⁸

II. ANNEXATION

A. *Methods of Annexation*

The Ohio code provides that annexation may be accomplished by an application of the adult freeholders or by application of a municipality. Under the first method a majority of the adult freeholders of an adjacent territory must submit a petition to the county commissioners.⁴⁹ A hearing

⁴⁷ OHIO REV. CODE § 703.22.

⁴⁸ '52 OPS. ATT'Y GEN. [Ohio] 763.

⁴⁹ The petition shall contain (1) signatures of a majority of the adult freeholders residing in adjacent territory; (2) name or names of a person or persons to act as agent or agents for the petitioners; (3) full description of the territory, which need not be platted; (4) accurate map or plat of the territory proposed to be annexed (OHIO REV. CODE § 709.02). The treatment following submission of the petition to the county commissioners is similar to that given a petition for incorporation. See note 12 *supra*.

is held⁵⁰ and if an order is issued,⁵¹ it is filed with the municipal clerk⁵² and presented to the municipal council.⁵³ If it is accepted by the council, the clerk, unless enjoined,⁵⁴ forwards copies to the county recorder and to the secretary of state.⁵⁵ If the municipal council rejects the application the matter is terminated at that point.⁵⁶

It is also permissible under Ohio law to petition for the annexation of territory that is *part* of a village.⁵⁷

A municipality may annex contiguous territory by an ordinance passed by a majority of its council directing a municipal official to prosecute the necessary proceedings.⁵⁸ A petition is submitted to the county commissioners⁵⁹ and an election is held by the inhabitants of the unincorporated area. If a majority votes against annexation no further proceedings are allowed for five years.⁶⁰

⁵⁰ See note 15 *supra*.

⁵¹ After the hearing, the board of county commissioners shall enter an order on its journal allowing annexation if it finds that (a) the petition is in correct form; (b) it contains all matters required; and (c) all statements are true. (OHIO REV. CODE § 707.07).

⁵² The annexation papers are then deposited with the auditor or clerk and remain in his office for sixty days. (OHIO REV. CODE § 709.03).

⁵³ The papers are then presented to the municipal clerk council which shall by resolution or ordinance accept or reject the application for annexation. (OHIO REV. CODE § 709.04). If the application is accepted the auditor or clerk of the municipality shall make two copies of all papers to include the petition, map or plat, transcript of the proceedings before the board of county commissioners, and the resolution or ordinance accepting annexation, together with an official certificate that it is correct and the municipal seal affixed. (OHIO REV. CODE § 709.06).

⁵⁴ Anytime within sixty days after the filing of the application with the auditor or clerk, an injunction may be sought to prevent the completion of the transcript. In such case, the auditor or clerk shall not present the papers to council until the hearing and disposition of the injunction petition. (OHIO REV. CODE § 709.07).

⁵⁵ If no injunction intervenes, then the auditor or clerk of the municipality shall deliver one copy of the transcript to the county recorder, who shall make a record thereof in the proper book, and forward one copy to the Secretary of State. (OHIO REV. CODE § 709.96).

⁵⁶ If the application for annexation is rejected, no further proceedings shall be had. Such rejection shall not be a bar to application thereafter to the board of county commissioners on the same subject. (OHIO REV. CODE § 709.05).

⁵⁷ OHIO REV. CODE § 709.35.

⁵⁸ The legislative authority of a municipality by a vote of not less than a majority of its members shall adopt an ordinance authorizing annexation of territory and directing the solicitor of the municipality, or some one to be named in the ordinance, to prosecute the necessary proceedings to effect it. (OHIO REV. CODE § 709.14).

⁵⁹ The petition shall contain (1) an accurate description of the territory; (2) an accurate map or plat of the territory; (3) the contents of the ordinance authorizing annexation. (OHIO REV. CODE § 709.15).

⁶⁰ If a majority of the electors of the entire unincorporated area of the township voting favor annexation, proceedings shall begin within ninety days to complete the annexation. (OHIO REV. CODE § 709.17).

TABLE III

DIFFERENCES BETWEEN THE TWO METHODS OF ANNEXATION

APPLICATION OF FREEHOLDERS	APPLICATION OF A MUNICIPALITY
Must be "adjacent" territory	Must be "contiguous" territory
Requires naming an agent	Requires no agent
No election	Requires election in the entire un- incorporated area of the town- ship
Municipality must adopt an ordi- nance accepting annexation	Need no ordinance accepting an- nexation since the action was initiated by the municipality

The requirement of an election when a municipality initiates annexation proceedings was made in 1945 in order to prevent annexation against the wishes of the inhabitants. In 1947 it was further amended to require the election to cover the entire unincorporated area of the township rather than only the area proposed to be annexed.⁶¹ However, this provision does not apply to county-owned territory wherein the resident electors are inmates of or resident employees of a county institution.⁶² Annexation of county-owned territory only requires the consent of the legislative authority of the political units concerned to complete the task.⁶³

B. *Consequences of Annexation*

Upon the annexation of one municipality to another, the corporate life and powers of the former are not ended but simply are merged with those of the latter. This apparently insignificant point can be troublesome and has been the source of litigation. It was raised years ago with reference to the annexation agreement between the village of Glenville and the city of Cleveland. That agreement provided that Glenville Fire Department members were to be retained as part of the Cleveland Fire Department. It was claimed that this provision was invalid because it was inconsistent with the civil service requirements regarding admission to the Cleveland Fire Department only by examination; that even though the Glenville Fire Department was subject to the same requirements of law, there might be regulations in Glenville allowing acceptance of a fireman who could not qualify as a member of the Cleveland Fire Department.

The matter hinged on what the general effect of annexation was. The Cuyahoga County Court of Appeals commented:

⁶¹ OHIO REV. CODE § 709.17.

⁶² *Ibid.*

⁶³ *Ibid.*

We think the decision of the matter must hinge on the general effect of annexation. If the corporate life and power of Glenville were not ended, but simply merged with those of Cleveland, there is no legal inconsistency in the agreement to incorporate the Glenville fire department with that of Cleveland, both having been under the merit system.

Section 1536-57 [now Revised Code, Section 709.34] indicates that this is the true construction of the matter. It provides that "when the annexation is completed, the two former corporations shall be governed as one, embracing the territory of each."⁶⁴

One objectionable feature to the law of annexation is seen when a city annexes unincorporated areas. These areas become a part of the city school district or the local school district.⁶⁵ There is, however, a movement under way to change this law by permitting annexation for municipal purposes without annexation for school purposes.

The question has been raised as to the length of time that may elapse before a municipality loses the right to take action upon a petition for annexation. In 1937 the Lucas County Court of Appeals held that the Toledo City Council had not lost its jurisdiction by its failure to act within a period of two years and eight months.⁶⁶

In recent years there has been considerable discussion and some litigation as to whether or not a private corporation is qualified under the statutes to sign a petition for annexation. In a rather questionable ruling of the Ohio attorney general in 1950, it was held that a private corporation which owns land adjacent to a municipality can qualify to petition for annexation of such territory to such municipality under Section 709.02 of the Ohio Revised Code.⁶⁷ However, in 1951, a successor attorney general held that "a person is not qualified to sign a petition for annexation unless he is an adult and resides within the territory to be annexed."⁶⁸ And in a 1953 Licking County Common Pleas Court case, it was held that a private corporation should not be counted in determining "a majority of adult freeholders under the statute for annexing territory to a municipality."⁶⁹ The court said: "that the word 'adult' cannot apply to a corporation because it is inanimate—a paper being." It would seem a little difficult to argue that a private corporation can be an "adult freeholder" when the accepted connotation of such phrase is a natural person of legal age.

III. DETACHMENT

The Ohio municipal law also provides three methods for detachment of lands from a municipality. The first method permits a majority of free-

⁶⁴ *State v. Excell*, 21 Ohio C.C. (N.S.) 603 (1908).

⁶⁵ OHIO REV. CODE § 3311.06.

⁶⁶ *Decker v. Toledo*, 56 Ohio App. 344, 10 N.E.2d 955 (1937).

⁶⁷ '50 OPS. ATT'Y GEN. [Ohio] 283.

⁶⁸ '51 OPS. ATT'Y GEN. [Ohio] 547.

⁶⁹ *Murdock v. Laudebaugh*, 52 Ohio Op. 135 (1953).

hold electors owning land in any part of a municipality to petition the county commissioners asking to be detached therefrom.⁷⁰ If the municipality by ordinance gives its consent, the commissioners shall detach such portion from the municipality and attach it to a contiguous township, unless the petition requests that it be constituted as a new township. An apportionment of indebtedness and funds of the municipality would be necessary in either case.

The second method of detachment is by election. The inhabitants of any portion of a village may request an election on the question of detachment by filing a petition⁷¹ with the board of elections. However, the portion to be detached must be contiguous to an adjoining township and not less than 1500 acres in area. The board of election determines whether the petition meets the statutory requirements and, if so, it must order an election within twenty days. If a majority of the inhabitants vote against detachment nothing more can be done for two years. If a majority favor detachment the record of the proceedings is certified to the county recorder who forwards a transcript to the secretary of state and the detachment is complete.⁷²

This procedure does not require village consent. The division of property, funds and indebtedness between the village and the detached area must be made upon the basis of their respective tax duplicates. If the village authorities and the public authorities in control of the detached territory are unable to agree upon such apportionment, it shall be made by the probate court, upon application by either side.⁷³

Lastly the owner of any unplatted farm land, which has been annexed to a municipality may petition the court of common pleas in the county in which the land is located for detachment at any time after the land has been annexed for five years.⁷⁴ This is an adversary proceeding in which the landowner is plaintiff and the municipality is the defendant. The landowner must prove that he has been injured by the annexation, as, for example, that the increased taxes are disproportionate to the benefits that he has received or that the character of his property is farmland rather than urban.

IV. CONCLUSION

The surrounding circumstances will dictate whether annexation or in-

⁷⁰ OHIO REV. CODE § 709.38.

⁷¹ The petition shall contain (1) an accurate description of the particular area; (2) an accurate map or plat of the particular area; (3) the name of the new township, if one is proposed; (4) the name of the person who is to act as agent; (5) signatures equal to fifteen percent of the votes cast in that area at the last general election (OHIO REV. CODE § 709.39).

⁷² OHIO REV. CODE § 709.39.

⁷³ OHIO REV. CODE § 709.40.

⁷⁴ OHIO REV. CODE § 709.41.

corporation is the better solution to any particular case. For example, if there is a possibility that a nearby city will annex the tax producing area of an unincorporated community and the citizens wish to prevent it, incorporation would be an effective defense. On the other hand, if a community would rather become part of a "going concern" than set up a new government, annexation would be the answer. Once the preferences of the inhabitants have been ascertained, skilled counsel and effective management should be mobilized to resolve the technical difficulties and launch the new community on its way.